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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 542/2013

Decision adopted by the Committee at its fifty-fourth session (20 April–15 May 2015)

Submitted by:	X (represented by counsel, Irina Sokolova)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	4 February 2013 (initial submission)
Date of present decision:	8 May 2015
Subject matter:	Extradition to Uzbekistan
Substantive issue:	Risk of torture upon return to the country of origin
Procedural issue:	Exhaustion of domestic remedies; substantiation of the complaint
Articles of the Convention:	Articles 3 and 22

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 542/2013*, **

Submitted by:	X (represented by counsel, Irina Sokolova)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	4 February 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2015,

Having concluded its consideration of complaint No. 542/2013, submitted to it by X under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is X, a citizen of Uzbekistan born in 1977 who at the time of the initial submission was detained in the Russian Federation, awaiting extradition to Uzbekistan. He claimed that his extradition to Uzbekistan would constitute a violation by the Russian Federation of article 3 of the Convention. He is represented by counsel, Irina Sokolova.

1.2 Under rule 114 of its rules of procedure, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, requested the State party, on 8 April 2013, not to extradite the complainant to Uzbekistan while his communication was under consideration by the Committee. Nevertheless, the complainant was extradited on 14 July 2013.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi, Kening Zhang.

** The text of an individual (dissenting) opinion of Committee member Alessio Bruni is appended to the present decision.

The facts as presented by the complainant

2.1 The complainant is a citizen of Uzbekistan from Kokand, in Fergana Province. In 2001, his wife, who suffered from psychological illness, committed suicide. The complainant was charged with incitement to suicide under article 103 of the Uzbek Criminal Code, but he contends that the investigation was terminated owing to the absence of corpus delicti in his acts.

2.2 At the end of 2007, the complainant decided to move to the Russian Federation for economic reasons. For this purpose, on 7 December 2007, he obtained a certificate of non-prosecution (no criminal record) at the Kokand Department of the Interior. He later presented this document to the Regional Department of the Federal Migration Service in Nizhny Novgorod, when applying for a temporary residence permit in the Russian Federation. On 4 January 2008, at the same Department of the Interior, he obtained a new passport with a stamp allowing him to travel outside Uzbekistan and the Commonwealth of Independent States. On 18 July 2008, the complainant obtained a three-year residence permit in Nizhny Novgorod, which was subsequently renewed. He travelled between the Russian Federation and Uzbekistan on numerous occasions, crossing border checkpoints. He stayed in Uzbekistan for six months in 2009 and for one and a half years in 2010–2011.

2.3 In July 2011, the complainant travelled from Nizhny Novgorod to Kazakhstan, where his brother was detained and risked extradition to Uzbekistan on charges of terrorism, religious extremism and connection to the Andijan events of 2005. In August 2011, he submitted to the Committee a complaint on behalf of his brother with a request for interim measures. In July 2012, the complainant's brother was released from detention in Kazakhstan, escorted to the Russian border and returned to Nizhny Novgorod, where he had previously lived.[1] On 24 August 2012, the complainant was detained in Nizhny Novgorod at the request of the Kokand Department of the Interior (Uzbekistan). This request stated that, on 25 April 2002, the complainant was convicted by the Fergana City Court to seven years in prison for incitement to suicide and, on 26 April 2012, he was put on a wanted list by the Kokand Department of the Interior (the same authority that had issued to the complainant a non-prosecution certificate in 2007 and a new passport in 2008).

2.4 On 27 August 2012, the complainant filed an asylum application with the Regional Department of the Federal Migration Service in Nizhny Novgorod. He claimed that his prosecution in Uzbekistan was motivated by his complaint on behalf of his brother to the Committee and by his ties to his brother, not by the criminal case, which was closed in 2002. He argued that no action was undertaken by the Uzbek authorities to find him between 2002 and 2012. On 7 December 2012, the Regional Department rejected the complainant's application on the basis that he was wanted in Uzbekistan for absconding from serving a sentence for a criminal offence and not on the basis of politically motivated charges. The Federal Migration Service also stated that the complainant did not produce evidence for his claim of not having committed the crime for which he was convicted, and that his real motive for requesting asylum was to avoid criminal liability in Uzbekistan. On 26 November 2012, the complainant appealed to the Sormovsky District Court. In addition to the arguments invoked before the Federal Migration Service, he alleged that the Fergana Court decision of 25 April 2002 was backdated, unlawful and groundless; that it was extremely brief, did not provide the proofs of his guilt and did not name the witnesses

[1] At the time of the submission, extradition proceedings against the complainant's brother were ongoing in the Russian Federation at the request of Uzbekistan.

whose evidence served as a basis for the decision; and that the execution of the judgement of 25 April 2002 was time-barred under both Uzbek and Russian law.[2]

2.5 His appeal was rejected on 18 January 2013. The Court stated, inter alia, that the complainant had not established a link between the persecution of his brother and his own and that, therefore, his argument that he would be persecuted by the Uzbek authorities for being related to a person charged with crimes of a political nature could not be taken into account. As for the claim that his prosecution was connected to the filing of a complaint on behalf of his brother to the Committee, the Court stated that the complainant did not raise this claim in his asylum application of 19 September 2012. On 15 February 2013, the complainant appealed the decision of the Sormovsky District Court to the Regional Court of Nizhny Novgorod. He referred to the international reports confirming the existence of widespread and systematic torture of people persecuted for political opinions and religious beliefs in Uzbekistan.[3] The complainant also raised the issue of the unreliability of the assurances provided by the Uzbek authorities.[4] The appeal was rejected on 10 April 2013.

2.6 On 11 January 2013, the complainant filed an application for temporary asylum on humanitarian grounds with the Regional Department of the Federal Migration Service in Nizhny Novgorod. The application was rejected on 23 January 2013 on grounds similar to those in the Service's decision concerning the complainant's asylum application. The Service also referred to the guarantees provided by the Office of the Procurator General of Uzbekistan to the effect that the complainant would not be prosecuted for political motives or for reasons of race, religion, nationality or political opinion; that he would not be subjected to torture, violence or inhuman or degrading treatment; and that he would be provided with the means to defend himself, including through legal assistance. The Service found that there is no evidence that the complainant would be prosecuted in Uzbekistan on grounds which could give basis for granting him asylum or temporary protection on humanitarian grounds. On 18 February 2013, the complainant appealed to the Sormovsky District Court, which rejected his appeal on 15 March 2013. On 18 April 2013, he appealed to the Regional Court of Nizhny Novgorod but his appeal was rejected on 20 August 2013.

2.7 In the meantime, on 18 September 2012, the Office of the Procurator General of Uzbekistan sent a request to the Office of the Procurator General of the Russian Federation for the complainant's extradition. On 19 October 2012, the complainant had an interview

[2] Counsel refers to article 69, paragraph 1, of the Criminal Code of Uzbekistan, under which the convicted person is released from serving the sentence if the sentence is not executed within 10 years, in cases where the sentence does not exceed 10 years of deprivation of liberty; and to article 78, paragraph 1, of the Criminal Code of the Russian Federation, which sets the time limit of six years for criminal prosecution of offences of medium gravity.

[3] Reference was made, inter alia, to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (see E/CN.4/2003/68/Add.2, paras. 66 and 68) and the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (see A/HRC/13/39/Add.6, paras. 94–98); a report of Amnesty International on the death penalty in Uzbekistan (2003) (available from http://amnesty.org.ru/sites/default/files/2003_Uzb_report_dp.pdf, Russian only); General Assembly resolution 60/174 on the situation of human rights in Uzbekistan; the report of the Secretary-General on the situation of human rights in Uzbekistan (A/61/526); the Committee's concluding observations on the third periodic report of Uzbekistan (see CAT/C/UZB/CO/3, paras. 6 and 16); and the judgement of the European Court of Human Rights of 24 April 2008, *Ismoilov and others v. Russia*, application No. 2947/06, paras. 120–123.

[4] Reference was made to the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment (see A/60/316, paras. 30–32, 51 and 52); and the judgement of the European Court of Human Rights, *Ismoilov and others v. Russia*, paras. 126–128.

with a procurator of the Kanavinsk District of Nizhny Novgorod, during which he explained that his prosecution by the Uzbek authorities was politically motivated and that they wanted to punish him for having filed a communication to the Committee on behalf of his brother, who is wanted by the Uzbek authorities allegedly in connection with the 2005 Andijan events. He also stated that the criminal prosecution against him in relation to the suicide of his wife was discontinued in 2002 and that he had continued to live in Uzbekistan, at his usual address, until he left for the Russian Federation in 2008. He also claimed that the Fergana Court decision of 25 April 2002 was backdated and groundless.

2.8 On 12 November 2012, the complainant's counsel submitted written arguments against the complainant's extradition to the Office of the Procurator General of the Russian Federation. On 15 January 2013, the Office of the Procurator General of the Russian Federation took a decision to extradite the complainant to Uzbekistan without waiting for the outcome of the asylum proceedings. On 30 January 2013, the complainant appealed the extradition decision before the Regional Court of Nizhny Novgorod, which rejected the appeal on 26 February 2013. Addressing the complainant's argument that the execution of the judgement of the Fergana City Court of 25 April 2002 was time-barred, the court stated that, according to the information provided by the Uzbek authorities, the search for the complainant initiated on 25 April 2002 had been called off on 22 June 2007 when a dead body was mistakenly identified as the complainant. The search was renewed on 26 April 2012. Therefore, the time limit for the execution of sentence had not expired. The Court did not address the complainant's argument that he lived at his usual address in Uzbekistan from 2002 until 2008 and was crossing the border between the Russian Federation and Uzbekistan regularly. As for the argument that his prosecution was politically motivated and he would face a risk of torture if extradited, the court noted that no evidence was presented on possible persecution for political or religious reason, and that there was no reason to doubt the authenticity of the documents provided by the Uzbek authorities. The Court also relied on the diplomatic assurances of non-persecution in the request for extradition of the Uzbek Office of the Procurator General. On 3 March 2013, the complainant appealed the decision of the Regional Court of Nizhny Novgorod before the Supreme Court. The appeal was rejected on 4 June 2013.

The complaint

3. The complainant argued that, if extradited to Uzbekistan, he would face a risk of persecution and torture owing to his family ties with his brother, who was being prosecuted in Uzbekistan for crimes of political and religious nature, and because of the complainant's communication to the Committee on his brother's behalf. He claimed that a complaint to international bodies submitted against Uzbekistan is treated as disagreement with the official policy of the State and the authors of such complaints risk being subjected to unfair criminal prosecution and torture.[5] Thus, according to him, his extradition would violate his rights under article 3 of the Convention.

The State party's observations

4.1 In a note verbale of 19 July 2013, the State party challenged the admissibility of the communication. The State party notes that the complainant has not exhausted all available domestic remedies on the main subject matter of his claim – the extradition decision of the Office of the Procurator General of 15 January 2013. On 4 March 2013, the complainant

[5] Reference is made, among others, to Human Rights Watch, *World Report 2013* (available from www.hrw.org/world-report/2013/country-chapters/uzbekistan) and Amnesty International, *The State of the World's Human Rights* (2012) (available from www.amnestyusa.org/sites/default/files/air12-report-english.pdf), pp. 361–363.

appealed the extradition decision before the Supreme Court. As of 1 June 2013, the Supreme Court has not rendered its decision on the appeal. As for the complainant's asylum proceedings, the State party explains that this part of the complaint falls outside the scope of article 3 of the Convention and is inadmissible.

4.2 On 19 August 2013, the State party submitted its observations on the merits and informed the Committee that the complainant was extradited on 14 July 2013, after the extradition decision of the Office of the Procurator General became final. According to the State party, the extradition request from the Uzbek authorities related to a criminal offence committed by the complainant in Uzbekistan and not to crimes of political nature. The complainant did not produce sufficient arguments to demonstrate that he would be at risk of torture, inhuman or degrading treatment or punishment, or that he would be persecuted by the Uzbek authorities on the basis of race, religion, nationality, belonging to a certain group or based on political opinion. The State party submits that the Committee's request for interim measures is not mandatory and that there are no reasons for its implementation, because the extradition check did not reveal any objective indications of a threat of torture upon the complainant's extradition to Uzbekistan. Moreover, the guarantees provided by the Uzbek authorities are sufficient to prevent such a threat.

The complainant's comments

5.1 On 24 September 2013, counsel informed the Committee that the complainant was detained upon extradition in the pretrial detention facility of Fergana. His relatives and lawyers had no access to him or any information about him. Counsel alleges that the lack of information about the complainant and absence of communication with him gives reason to believe that he was subjected to torture and that the Uzbek authorities fell short of implementing the guarantees provided to their Russian counterparts.

5.2 To the State party's argument regarding the exhaustion of domestic remedies, counsel responds that the final decision in extradition proceedings was adopted by the Supreme Court on 4 June 2013 and that the complainant was extradited on 14 July 2013. As for the complainant's asylum proceedings, counsel submits that they are part of the process initiated with the aim of stopping extradition and are not a separate claim before the Committee.

5.3 Commenting on the State party's observations on the merits, counsel submits that, during his asylum and extradition proceedings, the complainant denied existence of the criminal sentence and prosecution in Uzbekistan since 2002, and pointed at contradictions in the documents presented by the Uzbek authorities. Nevertheless, the Russian authorities failed to consider these concerns or the complainant's claims about the risk of torture to which he would be subjected in Uzbekistan. Nor did the State party's authorities consider the information from international sources, submitted by the complainant concerning the widespread and systematic use of torture in Uzbekistan. Instead, they kept referring to the guarantees presented by the Uzbek authorities.

Additional information by the State party

6.1 On 26 February 2014, the State party informed the Committee that the complainant had been released from prison on 30 August 2013, having served his sentence, as communicated by the Office of the Procurator General of Uzbekistan on 24 January 2014.

6.2 The State party reiterated its argument that the complainant had not exhausted domestic remedies at the moment of submitting the complaint to the Committee. On 30 January 2013, the complainant filed an appeal with the Regional Court of Nizhny Novgorod against the extradition decision of 15 January 2013, but he did not provide information on the outcome of that appeal.

6.3 Addressing counsel's argument on the use of torture in Uzbekistan and the allegations of the complainant that he would face torture upon extradition, the State party submits that, in order to establish a possible risk of torture upon extradition, the complainant has to provide proof that he belongs to a group that is systematically subjected to torture. The complainant claimed that the threat of torture in his case resulted from the submission of a complaint to the Committee, but he failed to provide evidence that torture is applied systematically to persons who have submitted complaints to the Committee.

Additional information by the complainant

7.1 On 12 May 2014, the complainant's counsel questioned the reliability of the information presented by the State party about the complainant's release after such a short period, when he had been sentenced to seven years in prison. She stated that the complainant did not contact her or his relatives after his alleged release. She added that the complainant would have returned to the Russian Federation, where his common-law wife and his brother live, if he had been released from prison. Counsel alleged that the secrecy about the fate of the complainant and the lack of contact with him give serious reasons to believe that he had been tortured in Uzbekistan. She also alleges that, even if he has been released, there is no guarantee that new charges will not be fabricated against him once the Committee finishes consideration of his communication.

7.2 Regarding the State party's argument about the non-exhaustion of domestic remedies, counsel notes that the State party should have been able to obtain the necessary information from the relevant authorities. In any case, all the relevant documents were submitted by the complainant in the letters to the Committee of 19 March 2013, 7 June 2013 and 9 October 2013. She also states that the Supreme Court's decision of 4 June 2013 was never communicated to the complainant or his counsel and that the complainant was extradited by the time this decision was made public on the Supreme Court website. According to counsel, there were no further effective domestic remedies that could have prevented the complainant's extradition. He was extradited even before the domestic proceedings on his asylum claim were finished, although under article 12 of the Russian Refugee Act, a person granted asylum in the Russian Federation cannot be returned to the country of his nationality against his will.

7.3 Concerning the State party's comments on the failure to substantiate the risk of torture for the complainant in Uzbekistan, counsel states that it is impossible to prove torture that could happen in the future. It is sufficient to establish a high probability of such a risk. The level of risk depends on the overall human rights situation in the country, whether torture is widely practised on certain groups of people and whether the person belongs to such groups, and she reiterates her previous arguments.

Additional information by the State party

8.1 On 2 October 2014, the State party informed the Committee that, on 30 August 2013, the Fergana City Court reduced the complainant's sentence from seven years in prison to nine months and seven days on the basis of general amnesty laws adopted between 2002 and 2007 and counted the time he spent in pre-extradition detention in the Russian Federation towards his sentence.

8.2 The State party maintained its position on the lack of substantiation of the complainant's claim and its inadmissibility.

Issues and proceedings before the Committee

The State party's failure to cooperate and to respect the Committee's request for interim measures pursuant to rule 114 of its rules of procedure

9.1 The Committee notes that the adoption of interim measures pursuant to rule 114 of its rules of procedure, in accordance with article 22 of the Convention, is vital to the role entrusted to the Committee under that article. Failure to respect that provision, in particular through such irreparable action as extraditing an alleged victim, undermines the protection of the rights enshrined in the Convention.[6]

9.2 The Committee observes that any State party that has made a declaration under article 22 (1) of the Convention recognizes the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. By making such a declaration, States parties implicitly undertake to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. By failing to respect the request for interim measures transmitted to it on 8 April 2013, the State party seriously failed in its obligations under article 22 of the Convention because it prevented the Committee from fully examining a complaint relating to a violation of the Convention, rendering the action by the Committee futile and its findings without effect.

Consideration of admissibility

10.1 Before considering any complaint submitted in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

10.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party argued that the complainant failed to exhaust available domestic remedies concerning the extradition decision by the Office of the Procurator General of 15 January 2013. The Committee notes that, in his submission of 19 March 2013, the complainant provided the text of the appeal decision of the Regional Court of Nizhny Novgorod dated 26 February 2013; on 4 June 2013, the complainant's counsel informed the Committee of the rejection of his appeal by the Supreme Court; and, on 24 September 2013, counsel submitted the text of the Supreme Court decision. The Committee also notes that the State party has not specified which additional domestic remedies had to be exhausted and could have been effective in preventing the complainant's extradition. The Committee therefore notes that, at the moment of considering the present communication, the domestic remedies have been exhausted and that it is not prevented by article 22 (5) (b) of the Convention from examining the present communication.

10.3 The Committee finds no further obstacles to the admissibility and declares the communication admissible, as it raises issues under article 3 of the Convention, and proceeds to examining it on the merits.

[6] See communication No. 444/2010, *Abdussamatov et al. v. Kazakhstan*, decision on admissibility of 15 November 2011, paras. 10.1 and 10.2.

Consideration of the merits

11.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

11.2 The Committee must determine whether the extradition of the complainant to Uzbekistan constituted a violation of the State party's obligations under article 3 (1) of the Convention not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee takes a decision on the question in the light of the information, which the authorities of the State party had or should have had at the time of the extradition. Subsequent events are useful for assessing the information that the State party actually had or should have had at the time of extradition.

11.3 In assessing whether the extradition of the complainant to Uzbekistan constitutes a violation of the State party's obligations under article 3 of the Convention, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee reiterates that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

11.4 The Committee recalls that, in its general comment No. 1 (1996) on the implementation of article 3 of the Convention in the context of article 22, it noted that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being "highly probable", but it must be personal and present (para. 6). In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.

11.5 With regard to the existence of a consistent pattern of gross, flagrant or mass human rights violations, the Committee recalls its concluding observations on the third periodic report of Uzbekistan, in which it expressed its concern about numerous, ongoing and consistent allegations of the routine use of torture and other cruel, inhuman or degrading treatment or punishment by law enforcement and investigative officials or with their instigation or consent, and that persons who sought refuge abroad and were returned to the country had been kept in detention in unknown places and possibly subjected to breaches of the rights protected by the Convention (see CAT/C/UZB/CO/3, paras. 6 and 9).

11.6 The Committee notes the complainant's claim, supported by reliable international reports, that use of torture and ill-treatment in Uzbekistan is systematic, in particular towards people whose political opinion differs from the official government policy, and that complaining to the Committee on behalf of his brother could be seen by the Uzbek authorities as a protest against the official government policy and would put the complainant at a personal risk of persecution and torture. The Committee also notes the State party's observation that the complainant's extradition was requested on the basis of a conviction for a criminal offence of a non-political nature and that the complainant failed to provide sufficient evidence of a risk of being subjected to torture owing to belonging to any particular group. The Committee also notes the argument made by the State party's authorities during the asylum and extradition proceedings that the complainant's motive for seeking asylum was to avoid serving a sentence for the criminal offence committed in Uzbekistan and their reliance on the diplomatic assurances provided by the Uzbek authorities that the complainant will not be subjected to persecution or torture if returned.

11.7 The Committee further notes the complainant's argument that the criminal prosecution against him in Uzbekistan was discontinued in 2002, owing to the absence of corpus delicti, even if this is not supported by any documents. At the same time, the Committee notes that the search of the complainant was initiated by the Uzbek authorities only on 26 April 2012, i.e. 10 years after the decision of the Fergana City Court allegedly became final, and that the State party failed to clarify the reasons for such a belated request.

11.8 The Committee recalls that, under the terms of its general comment No. 1, it will give considerable weight to findings of fact that are made by organs of the State party concerned, but that the Committee is not bound by such findings and has the power, provided by article 22 (4) of the Convention, to carry out a free assessment of the facts based upon the full set of circumstances in every case.[7] In the present case, the Committee observes that the extradition request was made by the Uzbek authorities 10 years after the complainant's sentence became final and executory, during which time the complainant lived freely in Uzbekistan, obtained a certificate of having no criminal record, a passport and an exit visa and travelled freely on a number of occasions to the Russian Federation. It also notes that, in fact, the extradition request was issued shortly after the complainant filed a complaint with the Committee, against the extradition of his brother to Uzbekistan, which, viewed in the light of a consistent pattern of gross, flagrant or mass human rights violations in that country, raise sufficient reasons to believe that the complainant would face a foreseeable, real and personal risk of torture upon extradition. The Committee considers that, in these circumstances, the authorities and the courts of the State party were obliged to duly verify the claims of the complainant and assess under national and international provisions the possible risk of torture run by the complainant. From the material on file, it cannot be concluded that the domestic authorities, including the courts, have made sufficient efforts to address the concerns raised by the complainant about the time-barred extradition request and to assess his personal circumstances in the light of the general human rights situation in Uzbekistan. In the light of the above, the Committee considers that the State party's authorities have failed in their duty to adequately address the complainant's claims that he would face a foreseeable, real and personal risk of torture upon return to Uzbekistan. Accordingly, the Committee concludes that, in the circumstances of the present case, by proceeding with the complainant's extradition to Uzbekistan, the State party breached its obligations under article 3 of the Convention.

11.9 Regarding the procurement from Uzbekistan of diplomatic assurances to the State party being sufficient protection against a manifest risk, the Committee recalls that such assurances cannot be used as an instrument to avoid the application of the principle of non-refoulement. In addition, the Committee notes that the State party has failed to provide any sufficiently specific details as to whether it has engaged in any form of post-expulsion monitoring and whether it has taken any steps to ensure that the monitoring is objective, impartial and sufficiently trustworthy.

12. The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a breach by the State party of articles 3 and 22 of the Convention.

13. In conformity with article 118, paragraph 5, of its rules of procedure, the Committee urges the State party to provide redress for the complainant, including his return to the Russian Federation and adequate compensation. It wishes to be informed, within 90 days, of the steps taken by the State party to respond to the present Views.

[7] General comment No. 1 and, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

Appendix

Individual dissenting opinion of Committee member Alessio Bruni

1. In paragraph 12 of the recommendation on this case, it is stated: "The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a breach by the State party of articles 3 and 22 of the Convention".

2. It is my opinion that the following formulation of the decision would have better reflected the facts of the case:

> The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a breach by the State party of article 3 of the Convention.
>
> In addition, the Committee wishes to recall that, on 8 April 2013, it requested the State party not to extradite the complainant to Uzbekistan while his communication was under consideration by the Committee, in accordance with rule 114 of its rules of procedure. Nevertheless, the complainant was extradited on 14 July 2013.
>
> The non-compliance by the State party with the Committee's request caused serious damage to the effectiveness of the Committee's deliberations on this case and raised a serious doubt about the willingness of the State party to implement article 22 of the Convention in good faith.

3. It is my opinion that, in any case, the Committee should have informed the State party in advance that, if it did not comply with the Committee's request for interim measures, the Committee could consider such non-compliance as a violation of article 22 of the Convention. A State party cannot be held responsible for a violation of the Convention without being informed of the Committee's views on the consequences for the State party of its non-compliance with the Committee's rules of procedure.